

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2001-422-C - ORDER NO. 2002-283
APRIL 16, 2002

IN RE: Application of Telefyne Incorporated for a) ORDER
Certificate of Public Convenience and) GRANTING
Necessity to Operate as a Reseller of) CERTIFICATE FOR
Interexchange Telecommunications Services) LONG DISTANCE
within the State of South Carolina and for) AUTHORITY AND
Alternative Regulation.) MODIFIED
) ALTERNATIVE
) REGULATION

This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of Telefyne Incorporated (“Telefyne” or the “Company”) requesting a Certificate of Public Convenience and Necessity authorizing it to operate as a reseller of interexchange telecommunications services within the State of South Carolina. In addition, the Company requests that the Commission regulate its business services offerings in accordance with the principles and procedures established for alternative regulation in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Company’s Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2001) and the Regulations of the Public Service Commission of South Carolina.

The Commission’s Executive Director instructed Telefyne to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of Telefyne’s Application

and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. Telefyne complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene were filed.

A hearing was convened on March 21, 2002, at 10:30 a.m. in the Commission's Hearing Room at 101 Executive Center Drive, Columbia, South Carolina. The Honorable William Saunders, Chairman, presided. Scott A. Elliott, Esquire, represented Telefyne. Adelaide D. Kline, Staff Counsel, represented the Commission Staff.

Jorge Bellas, President of Telefyne, appeared and testified in support of the Application. Mr. Bellas testified that he primarily handles financial and marketing planning for the Company. He said he additionally handles some technical matters. The record reveals that Telefyne is a Nevada corporation that has been authorized to transact business within the State of South Carolina. As a reseller of intrastate interexchange telecommunications services, Mr. Bellas testified that Telefyne seeks authority to operate as a reseller of intraLATA and interLATA intrastate telecommunications services within this state. He said Telefyne plans primarily to offer prepaid calling cards on a business to business arrangement. He said the target group for Telefyne is wholesalers who service the retail industry, specifically the convenience store industry. He offered that Telefyne has no plans at this time to construct any telecommunications transmission facilities of its own and seeks no construction authority. Mr. Bellas explained that Telefyne has been providing telecommunications services since 1997. In conjunction with the offering of prepaid calling cards and the Commission's requirement of a \$5,000 bond, Mr. Bellas testified his Company is prepared to comply with that requirement. He further testified

that Telefyne does not intend to do telemarketing but the Company understands the Commission guidelines. The record reveals that Telefyne intends to market its services through direct sales by Telefyne's employees and independent sales agents. Mr. Bellas testified that Christine Stevens is the regulatory and customer contact person. He said she could be reached at (850) 995-8807.

Regarding the Company's technical abilities to offer telecommunications services in South Carolina, Mr. Bellas testified that Telefyne intends to utilize BTI, Cable & Wireless, Qwest and Global Crossing as its underlying carriers. He stated that Telefyne will only utilize carriers properly certified by this Commission to provide service in this state. Telefyne is authorized to provide telecommunications services in forty-six states. According to Mr. Bellas, Telefyne's customer service hours are 6:00 a.m. until midnight, twenty-four hours a day, seven days a week. He offered that the caller will be able to use an interactive voice response system after midnight by leaving messages which are responded to on the following day. He said the Company's name and toll free telephone number appear on the prepaid calling cards. Mr. Bellas testified that Victor Ovalle is the manager of the customer service area and can be reached at (888) 913-8282.

Concerning the financial ability of Telefyne to operate within South Carolina, Mr. Bellas stated that Telefyne has been profitable since the end of 1997 and continues to be profitable. The Company's unaudited financial statements dated December 31, 2000 and February 28, 2001 reveal that the Company is strong financially and in a position to begin operations in South Carolina. For the period ended December 31, 2000, cash made up 31% of the Company's total assets and the current ratio was a strong 1.27. The financial

statements reveal that Telefyne had no long-term debt at that time. Mr. Bellas testified that Pete Agree, the Company's in-house accountant will serve as the financial contact person. He can be reached at (850) 995-8807.

As to Telefyne's managerial abilities to offer the services it proposes to offer in South Carolina, Mr. Bellas testified that Telefyne's management personnel represent a broad spectrum of business and technical disciplines, possessing many years of individual and aggregate telecommunications experience. Mr. Bellas said that he has been selling or developing products for the telecommunications industry since 1997. He stated that in addition to negotiating rates, he technically can write code and employs engineers who create the platforms and make products that actually operate. Mr. Bellas received his undergraduate degree from the University of La Verne and then earned his Masters Degree in Business Administration. As to Telefyne's other management personnel, Mr. Bellas testified that Thomas Marr, Sr., is Chairman of the Board of Telefyne. Mr. Marr, Sr. received his Juris Doctor of Law degree from the University of Alabama School of Law. The record reveals that Thomas Marr, Jr. and Frank Rutherford Smith serve as Vice President and Assistant Secretary/Treasurer of Telefyne. Mr. Marr, Jr. holds a degree in finance from the University of South Alabama. Mr. Smith was educated at the University of Alabama School of Commerce. Christine Marr and Christine Stevens serve as Assistant Secretary/Treasurer of Telefyne. Mr. Bellas testified that both have previous telecommunications experience.

Mr. Bellas stated that Telefyne has never had authority denied in any state where it has applied for authority nor has the Company had authority revoked in any state where

it has been granted authority. Additionally, he said Telefyne has never been the subject of an investigation, fined or sanctioned by a state or federal regulatory body. According to the testimony, Telefyne has not marketed its services in South Carolina prior to receiving certification, and Telefyne has not received revenues from the completion of intrastate calls in South Carolina prior to receiving certification. Mr. Bellas stated that Telefyne will abide by all the Commission's rules, regulations and Orders upon the Company receiving certification to operate as a reseller of intrastate interexchange telecommunications services in South Carolina.

Mr. Bellas testified that Telefyne agrees to make all changes to its final tariff that were suggested by the Commission Staff, including the addition of the Company's email address and telephone number to the bottom of each page of the final tariff. He additionally agreed to file a copy of the Company's Bill Form with the final tariff in order to be in compliance with the Commission's Rules and Regulations. He stated he understands and is aware of the Commission's requirements that all telecommunications carriers file a report on South Carolina operations, a gross receipts report, and a universal service contribution report on an annual basis. Mr. Bellas stated the Company does intend to offer prepaid calling cards and agrees to post the required \$5,000 bond. He committed to file his Company's financial reports on a timely basis and to keep South Carolina specific records.

Telefyne requested that all of its business service offerings be regulated pursuant to the procedures described and set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. It is Telefyne's intent by this request to have its business services regulated in

the same manner as this Commission has permitted for AT&T Communications of the Southern States. Mr. Bellas testified that he understands that alternative regulation has now been modified by this Commission because of the re-imposition of rate caps with regard to certain “operator assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange as the toll provider. Mr. Bellas testified he understands that Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls.

According to the Application and Mr. Bellas’s testimony, Telefyne requests a waiver of 26 S.C. Code Ann. Regs. 103-610 (1976) so that Telefyne can maintain its records outside of South Carolina. The Company wishes to maintain its books and records at its headquarters in Pace, Florida; it will keep South Carolina specific records. Mr. Bellas stated that the Company is aware and agrees to abide by the Commission’s regulation that requires that these records be made available for examination by the Commission at reasonable hours. Telefyne also requested that it be allowed to keep its books and financial records according to the Generally Accepted Accounting Principles (GAAP) rather than according to the Uniform System of Accounts (USOA).

After full consideration of the applicable law, the Company’s Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Telefyne is organized as a corporation under the laws of the State of Nevada and has been authorized to transact business within the State of South Carolina.

2. Telefyne is a provider of long distance services and wishes to provide long distance services in South Carolina.

3. Telefyne has the experience, capability, and financial resources to provide the services as described in its Application.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Telefyne to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for the long distance services of Telefyne which are consistent with the principles and procedures established for alternative regulation for business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.

Under the Commission approved alternative regulation, the business service offerings of Telefyne including consumer card services, and operator services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in

Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain “operator-assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to Telefyne also.

3. The Commission adopts a rate design for Telefyne for its resale of residential interexchange services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

4. Telefyne shall not adjust its residential interexchange rates below the approved maximum level without notice to the Commission and to the public. Telefyne shall file its proposed rate changes, publish its notice of such changes, and file affidavits

of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for interexchange services reflected in the tariff, which would be applicable to the general body of the Company's subscribers, shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provision of S.C. Code Ann. §58-9-540 (Supp. 2001).

5. If it has not already done so by the date of issuance of this Order, Telefyne shall file its revised tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations. Further, Telefyne shall file a copy of its Bill Form as required by 26 S.C. Code Ann. Regs. 103-612.2.2 and 102-622.1 (1976) with its final Tariff.

6. Telefyne is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

7. With regard to the Telefyne resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. Telefyne shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Telefyne changes underlying carriers, it shall notify the Commission in writing.

9. Telefyne shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, Telefyne shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

Telefyne shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the Commission’s website at www.psc.state.sc.us/forms; this form shall be utilized for the provision of this information to the Commission. Further, Telefyne shall promptly notify the Commission in writing if the representatives are replaced.

10. As a condition of offering debit card services, the Commission requires the Company to post with the Commission a bond in the form of a Certificate of Deposit worth \$5,000 drawn in the name of the Public Service Commission of South Carolina or a surety bond in the amount of \$5,000 which is payable to the Commission. The Certificate of Deposit shall be drawn on federal or state chartered banks or savings and loan associations which maintain an office in this state and whose accounts are insured by either the FDIC or the Federal Savings and Loan Insurance Corporation. A surety bond

shall be issued by a duly licensed bonding or insurance company authorized to do business in South Carolina. This condition may be reviewed annually.

If the Company sells its debit cards to retail establishments for resale of the debit cards, and the retailer of the debit cards deviates from the suggested retail price as filed in the tariff, then the Company will withdraw its cards from that retail outlet. This Commission strongly suggests that the Company enter into written agreements with its South Carolina retail outlets regarding this policy of abiding by suggested retail pricing prior to the outlet marketing the card.

The Company shall amend its tariff to include provisions on the Company's prepaid calling cards. In addition, the Company shall include its name on the back of each of its prepaid calling cards.

11. With regard to the origination and termination of toll calls within the same LATA, Telefyne shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the Federal Communications Commission pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209).

12. The Company's request to maintain its books in accordance with Generally Accepted Accounting Principles (GAAP) is granted.

13. The Company also requests a waiver of 26 S.C. Code Ann. Regs. 103-610 (Supp. 2001) which requires the Company's books and records to be kept in the State of

South Carolina. The Company desires to keep its books and records at its principal place of business in Pace, Florida. We find that it would be unusually difficult for the Company to maintain its books and records in South Carolina. It would be in the public interest to have the company maintain its books and records at its principal place of business; therefore, the Company's request for a waiver of Regulation 103-610 is granted.

14. Telefyne is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

15. Telefyne shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, Telefyne shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at www.psc.state.sc.us/forms. The title of this form is "Annual Information on South Carolina Operations for Interexchange Companies and AOS." This form shall be utilized by the Company to file annual financial information with the Commission. Commission gross receipts forms are due to be filed with the Commission no later than October first of each year.

16. Each telecommunications company certified in South Carolina is required to file annually the Intrastate State Universal Service Fund (USF) worksheet. This worksheet provides the Commission Staff information required to determine each

telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than August 15th.

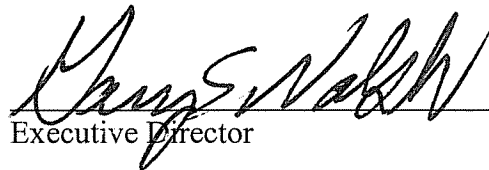
17. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:


Executive Director

(SEAL)